

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Coorg Transport Ltd., Mercara.

Award of the Labour Court, Bangalore—Published.

Read the following papers:—

(1) Letter No. 946/67-68, dated 27th November 1967, from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR
COURT, BANGALORE.

Dated this 27th day of November 1967.

Present :

Sri P. T. Kadkol, B.Sc., LL.B. ... *Presiding Officer.*

Reference No. 120 of 1968

Workmen represented by the Joint Secretary, Coorg
District General Workers' Union, Mercara ... *I Party.*

Vs

The Management of Coorg Transport Limited,
Mercara. ... *II Party.*

Reference.

Government Order No. LMA 881 LLD 66, dated 14th October 1966.

AWARD

The Government of Mysore being of opinion that an Industrial Dispute exists between the Workmen and the Management of Coorg Transport Limited, Coorg, have referred it to this Court for adjudication under Section 10 (1) (c) of the Industrial Disputes

Act, 1947, by their Order No. LMA 381 LLD 66, dated 14th October 1966, setting out the following points of dispute:—

“Whether the Management of Coorg Transport Limited, Mercara are justified in dismissing Sri M. K. Ibrahim from the service with effect from 6th December 1965? If not, is he entitled to reinstatement with back wages and continuity of service with effect from that date or other relief if any?”

2. The cause of the aggrieved workman M. K. Ibrahim has been sponsored by the Coorg District General Workers' Union, Mercara. This Union as representing the workmen is the First Party. The Management of the Coorg Transport Limited, Mercara, is the Second Party. Mr. Venkataramana, the Secretary of the Union, has appeared for the First Party and Mr. K. Shashidhar Rao has appeared for the Second Party.

3. The Second Party is an Undertaking doing Passenger Transport business, by running passenger buses. It is now in liquidation. The winding up proceedings are in progress, through a duly appointed liquidator. All the buses have been sold and all the workers have been discharged, by paying them the statutory compensation on or about April 5, 1966. This fact is admitted by the aggrieved workman, Ibrahim, in his deposition before this Court (Para 2, W. W. 1)

4. The aggrieved workman Ibrahim was in the service of the Second Party for a number of years, as line conductor. He was working as such, in Bus No. MYZ 4066, on 10th September 1965, in its run from Mangalore to Mercara, *via* Sulla, Athodu and Gunadaka. It was his duty to issue tickets to all passengers and collect the due fare from them and credit the same to the Management at the end of the day. This Bus was checked by the checking inspector, Mr. Gadiyar, at about 5.15 P.M., near Gunadaka. Mr. Gadiyar found that four passengers, who were travelling in the bus, had not been issued any tickets, by the line conductor, Ibrahim. He issued the necessary tickets to the four passengers and made a remark to that effect in the gate pass. On the basis of these remarks in the gate pass, Ex- M. 9, the Management charge-sheeted Ibrahim, held a domestic enquiry against him, found him guilty of the charge and dismissed him from service with effect from 6th December 1965. These facts are admitted on both hands,

5. The First Party Union has now raised this dispute challenging the dismissal of Ibrahim. In the statement of claims dated 5th December 1966, it has attacked the domestic enquiry on various grounds. It has said that the enquiry was opposed to all principles of natural justice and was *male fide*. It has asserted that the Management has victimised the workman and his dismissal amounts to unfair labour practice. It has further asserted that the charge was not proved and the findings reached at the domestic enquiry were perverse. Finally it has condemned the punishment as too harsh and severe and to be such as no reasonable person would impose in similar circumstances. It has prayed that the order of dismissal be set aside and the Management be directed to reinstate the worker with full back wages and continuity of service.

6. On behalf of the Second Party, the Liquidator has submitted the statement of objections dated 5th January 1967. The contentions raised therein are —

“ This dispute referred for adjudication is not an industrial dispute and hence this court has no jurisdiction to adjudicate upon it. The First Party Union, being a General Union, has no right to sponsor or represent the cause of the aggrieved workman. The aggrieved workman has been dismissed after being found guilty of the charge of attempting to misappropriate money and defraud the Management to the extent of Rs. 1.20 P, by collecting the due fare from the passengers and not issuing tickets to them. The domestic enquiry has been held according to all the accepted principles of natural justice. The Management has acted *bona fide* and not in a spirit of victimising the worker. Considering the proved charge, the punishment of dismissal can not be condemned as harsh or severe. Since the Transport service has gone in liquidation, all the buses have been sold and all passenger services have been stopped the management can not be directed to reinstate the workman. The workman is not entitled to any reliefs. Hence the reference be rejected etc :

7. When the case came up before me on 24th January 1967, Mr. Shashidhar Rao appearing for the Second Party Management submitted that he would lead additional evidence in

support of the charge against the delinquent workman. Hence the following issues were framed and set down for hearing:—

1. Whether the dispute referred for adjudication is an industrial dispute?
2. Whether the I Party can represent the workmen?
3. Whether the II Party proves the charges against the delinquent workman?
4. Are the findings recorded at the domestic enquiry and the impugned order based on them liable to be set aside for any of the following reasons.—
 - (i) The Management was lacking in *bona fides*;
 - (ii) The order is grossly erroneous;
 - (iii) The Management is guilty of victimisation or unfair labour practice;
 - (iv) The principles of natural justice have been violated during the domestic enquiry;
 - (v) The findings recorded at the enquiry and the order based on them are perverse;
5. Can reinstatement be allowed when the II party Undertaking is in liquidation?
6. What Award?

Parties were asked to lead evidence on these issues.

8. The matter came up for hearing before me at Mercara Camp on 30th August 1967. At that time Mr. Shashidhar Rao submitted that he would not lead any additional evidence to prove the charge against the workman, since the records of enquiry were admitted by the First Party. Thereafter, the First Party examined the workman Ibrahim (W.W.1) and closed its side. The Second Party did not lead any oral evidence. The documents produced by it have been marked as Exts. M. 1 to M. 9 on being admitted by the First Party. This is all the evidence in the case.

9. The first issue requiring decision is, whether the present dispute is an industrial dispute. The workman Ibrahim has been dismissed by the Management on 6th December 1965. Section 2A of the Industrial Disputes Act, has come into force on 1st December 1965. Hence, leaving out all other considerations, it shall have to be held that the present dispute is an

Industrial Dispute. Hence I hold it to be so and record my finding on the first issue in the affirmative.

10. The aggrieved workman is a member of the first party which is a registered trade union. Hence this Union is entitled to represent the workman. I, therefore, record my finding on the second issue in the affirmative.

11 Now that the Management has submitted through Mr. K. Shashidhar Rao that it would not lead any additional evidence in support of the charge against the workman, Ibrahim, and would stand entirely by the records of the domestic enquiry, the third issue shall have to be dropped and I do so.

12 The admitted position now is that the Management has dismissed the workman Ibrahim, after finding him guilty of the charge of attempting to misappropriate or defrauding it, of its funds. The amount involved is small, it being only Re. 1-20 P. The records of the domestic enquiry, are at Exts. M. 1 to M. 9 and the first party has admitted them. The Management has chosen to stand or fall by the domestic enquiry it has held. In such circumstances, this court can interfere with the findings recorded at the domestic enquiry and the impugned order based on them, only if it finds that:—

- (1) there was want of good faith on the part of the Management
- (2) There was victimisation or unfair labour practice on the part of the management in the action taken by it;
- (3) The Management was guilty of a basic error or violation of principles of natural justice; or
- (4) when on the material placed on record the findings are completely baseless or perverse.

This is the principle laid down by the Supreme Court in *Indian Iron & Steel Co., Ltd., Vs. Their Workmen* reported in 1958-2-LLJ 260 and which has been reiterated by the same Court in various subsequent decisions to date.

13 The essential requisites of a domestic enquiry, as laid down by the Supreme Court in *Union of India Vs. Verma* (1958-2-LLJ 259) and *Sur Enamel and Stamping Works Vs. their*

Workmen (1963-2.LLJ 452), as also in many subsequent decisions are :—

“ The Rules of natural justice require that the delinquent should have the opportunity of adducing all relevant evidence on which he relies ; evidence of the opponent should be taken in his presence ; he should have an opportunity of cross-examining the witnesses examined by the opposite party and no material should be relied upon against him without his being given an opportunity of explaining them.”

14. The substance of the charge against the workman Ibrahim is that on 10th September 1965, when he was operating the Bus from Mangalore to Mercara, he had not issued tickets to four passengers, even though he had collected the due fare from them and thus attempted to misappropriate or defraud the Management of the money legitimately due to it.

15. Now I turn to examine the records of the domestic enquiry. Ex. M. 1 is the “ show cause ” notice issued to Ibrahim by the Management. It has specifically mentioned therein that he had collected the fare of Rs. 1.20 P. from four passengers and had not issued tickets to them and called upon him to show cause why suitable action should not be taken against him. This show cause notice is dated 16th September 1965. Ibrahim has given his reply to it on 23rd September, 1965, under Ex. M. 2. This explanation, which runs into five pages has been written by himself. But this explanation did not satisfy the Management. Hence it issued a regular charge sheet against him on 22nd October 1965, under Ex. M. 3 and called upon him to give his say to the charge. Ibrahim gave his reply to the charge, under Ex. M. 4, on 5th November 1965. Therein, he has referred the Management to his reply at Ex. M. 2 dated 23rd September 1965. Thereafter, the Management issued him the notice at Ex. M. 5 on 17th November 1965, intimating him that it would hold an enquiry into the charge, on 3rd December 1965 and asking him to attend it with his witnesses and documents, if any.

16. As scheduled, the enquiry commenced on 3rd December 1965 and Ibrahim attended it and took part in it. The records of enquiry are at Ex. M. 6. They show that the Management has examined Gadiyar, the checking inspector, as its first witness and Ibrahim has cross examined him. Then the Management has

examined the Driver of the bus as its second witness. He has not supported the Management. Thereafter the workmen has been examined. The records of enquiry run into nine sheets and below each sheet, Ibrahim has signed. The findings recorded by the enquiry officer are at Ex. M. 7. He has held Ibrahim to be guilty of the charge. Thereafter the Management has passed the order at Ex. M. 8 on 6th December 1965 dismissing him from service.

17. A scrutiny of the enquiry proceedings would disclose that the correct procedure has been followed by the enquiry officer in conducting the enquiry. The evidence has been recorded in the presence of Ibrahim and he has been given the opportunity to cross-examine the Management witnesses. At the conclusion of the Management evidence, Ibrahim has been examined and he has stated that he had no witnesses to examine in his defence.

18. Even though the domestic enquiry has been attacked on various grounds in the statement of claims, Ibrahim, in his deposition before me (W. W. 1) has only stated thus, in his direct examination :—

“ I attended the domestic enquiry held by the Management. The four passengers were not examined at the enquiry. The checking Inspector was examined in my presence in the domestic enquiry. I did not examine any defence witnesses.

Then, in the cross-examination, he has stated :—

“ I see the enquiry proceedings, I have signed on every page of these proceedings. In my reply Ex. M. 2 dated 23rd September 1965, I have stated that the three passengers told the checking inspector that they had paid 20 paise each in my hands as their fare (portion marked Ex. M. 2-A) I have written so by mistake.”

19. It can be seen by reading the deposition of Ibrahim as a whole that he has said nothing, even to suggest that the management was acting *mala fide* or in a spirit of victimisation or unfair labour practice. The findings show that principles of natural justice have not been violated in the least, at any stage of domestic enquiry, starting with the first show cause notice. The main grievance made in the statement of claims as also at the hearing before me is that the four passengers who are said to have paid their fare but to whom tickets had not been issued, have not been examined by the Management. But in his explanation at Ex.

M. 2-A which he himself has written, Ibrahim has stated that the passengers told the checking inspector that they had paid their fare and no tickets had been issued to them. The non-examination of the four passengers cannot vitiate the domestic enquiry. It was open to the enquiry officer to believe or disbelieve Gadiyar's evidence. He has believed Gadiyar. It is not open to this court to reassess the evidence led at the domestic enquiry and come to its own conclusions, whatever they be. It is also not open to this court to decide whether the evidence led by the Management at the domestic enquiry was or was not sufficient for the enquiry officer to reach the conclusion he has reached. The explanation Ex. M. 2 read with the evidence of Gadiyar can certainly lead to a possible conclusion that the charge was proved. This is the finding given by the enquiry officer and I do not think that it can be considered as baseless or perverse.

20. In his deposition before me, as also in Ex. M. 2, Ibrahim has admitted that he had not issued tickets to four passengers. His case is that the four passengers had got into the bus, one furlong before the spot, where the bus was checked. His further case is that he was just enquiring with them where they were going in order to issue them tickets, but meanwhile, the bus was stopped and checked and he had to deliver the bus statement and ticket book to the checking inspector according to the instructions of the Company. He has asserted that the passengers had not paid him their fares yet. It may be noted that one of the four passengers had got into the bus at Sulla village, some miles away from the spot where the bus was stopped and checked. Even he had not been issued any ticket. Then we find that tickets were issued to those four passengers after the bus was checked by the checking inspector himself. He has made an entry to that effect in the bus statement Ex. M. 9. Ibrahim has not said anywhere that the four passengers paid the fares to the checking inspector or himself, after the tickets were issued by the checking inspector. The management has made a rule that the bus should not be allowed to move before tickets are issued to the passengers. This rule is printed on the bus statement itself. The conductors are also warned in the same rule that any infringement of the rule would be considered as an act of attempting to defraud the Company, on their part (i. e., on the part of the conductors). This rule is marked as Ex. M. 9-A. When questioned on this point, Ibrahim has stated (*vide* Para 8) before me :—

"I see the bus statement at Ex. M. 9 prepared by me. It is true that it has been printed there that the conductor

must issue the tickets immediately a passenger boards the bus and before the bus is started (Ex. M. 9-A). It is true that such a condition exists. But it is not possible to enforce it."

Considering, therefore, the permissible part of the evidence led at the domestic enquiry and all the circumstances connected with the charge, I am of the view that the findings recorded by the enquiry officer are reasonably possible conclusions and they are not vitiated on any of the grounds set out by the Supreme Court in 1958-2-LLJ-260. Hence I record my finding against the first party on all parts of issue No. 4.

21. The Supreme Court has held that though the Industrial Court cannot question the sentence imposed by the Management on a workman found guilty of a charge at the domestic enquiry, it should examine the sentence imposed to see whether it is unduly harsh or severe, as such a sentence may by itself amount to the victimisation of the worker (*Vide* Hindu Construction & Engineering Co., Ltd., Vs. Their Workmen-1965-I-LLJ 462). The conductors of a bus are in a position of trust with respect to the Management, as far as the collections of the fares from the passengers are concerned. If the conductors collect the fare from the passengers and do not issue tickets to them, it would be reasonable to infer that they do so with some dishonest intention, which would be to misappropriate the amount collected and defraud the management of the money legitimately due to it. Such act on the part of the conductors cannot but be considered as a serious misconduct. The dismissal of such a conductor, cannot, therefore be considered, as unduly harsh or severe. I would, therefore, reject this contention urged by the First Party.

22. It, therefore, follows that Ibrahim is not entitled to any of the reliefs claimed by him. He is not entitled to be reinstated. The Second Party undertaking has also gone in liquidation and all the buses have been sold by it. On this ground too, Ibrahim cannot be reinstated. I record my finding on the fifth issue accordingly.

23. In the result, therefore, I make an award as below :—

AWARD.

This reference and the demands made by the aggrieved workman Ibrahim and the first party union on his behalf are rejected with no order as to costs.

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

"COPY"

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

ORDER.

Bangalore, dated 4th December 1966.

S. O. 2379.—WHEREAS by State Government Order No. LMA 381 LLD 66, dated 14th October 1966, the Industrial Dispute between the Workmen and the Management of Coorg Transport Ltd., Mercara, was referred to the Labour Court, Bangalore for adjudication ;

AND WHEREAS the Labour Court, has submitted to the State Government its award in respect of the said Industrial Dispute ;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore, are pleased to direct the publication of the said award as above in the *Mysore Gazette*.

[No. FCL 381 LLD 66.]

By Order and in the name of the Governor of Mysore,

G. G. PURBHIT, *Under Secy.*